IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

FRIDAY, THE 2ND FEBRUARY 2007 / 13TH MAGHA 1928

WP(C).No. 35343 OF 2005(G)

PETITIONER:

WEST COAST RUBBERS,
INDUSTRIAL ESTATE, ETTUMANOOR,
REPRESENTED BY ITS MANAGING PARTNER,
THAMBAN JOHN.

BY ADV. SRI.BECHU KURIAN THOMAS
SRI.PAUL JACOB (P)

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
SECRETARY, DEPARTMENT OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

2. THE STATE LEVEL COMMITTEE ON SALES
TAX EXEMPTION, REPRESENTED BY THE DIRECTOR,
DEPARTMENT OF INDUSTRIES AND COMMERCE,
THIRUVANANTHAPURAM.

3. THE GENERAL MANAGER,
DISTRICT INDUSTRIES CENTER,
KOTTAYAM.

4. SALES TAX OFFICER, ETTUMANOOR,
KOTTAYAM.

5. DEPUTY TAHSILDAR (RR), KOTTAYAM.

GOVT. PLEADER SRI. SOJAN JAMES.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/1/2007, THE COURT ON 2.2.2007, DELIVERED THE FOLLOWING:

WP(C) 35343/2005

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE ORDER DATED 9.5.1990 NUMBERED AS C2/2198/90/DDIS., ISSUED BY THE 3RD RESPONDENT.

EXT.P2 TRUE COPY OF THE ORDER DATED 27.12.1993 NUMBERED AS C2/4013/93/DDIS, ISSUED BY THE 3RD RESPONDENT.

EXT.P3 TRUE COPY OF THE ORDER DATED 14.1.2002 NUMBERED AS C2/3403/2001, ISSUED BY THE 3RD RESPONDENT.

EXT.P4 TRUE COPY OF ORDER DATED 17.5.2003 AND NUMBERED AS C2/3403/93/2001 ISSUED BY THE 3RD RESPONDENT.

EXT.P5 TRUE COPY OF THE APPEAL MEMORANDUM DATED 19.6.2003 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P6 TRUE COPY OF THE ARGUMENT NOTES SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 14.6.2005.

EXT.P7 TRUE COPY OF THE APPELLATE ORDER OF THE 2ND RESPONDENT DATED 21.10.2005 AND NUMBERED AS FC3/14222/03.

EXT.P8 TRUE COPY OF THE SRO 502/90.

EXT. P8(a) TRUE COPY OF THE SRO 1730/1993.

EXT.P8(b) TRUE COPY OF THE SRO 752/1994.

EXT.P9 TRUE COPY OF THE COMMON ORDER OF TE SALES TAX APPELLATE TRIBUNAL, KOTTAYAM DATED 28.11.2005 FOR THE ASSESSMENT YEARS 1990-91 AND 1991-92.

RESPONDENTS' EXHIBITS:

NIL.

// TRUE COPY //

P.S. TO JUDGE.

KNC/-

P.R. RAMAN, J.

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W.P.(C) NO. 35343 OF 2005

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DATED THIS, THE 2ND DAY OF FEBRUARY, 2007

J U D G M E N T

Petitioner is a partnership firm engaged in the business of manufacturing battery containers and moulded industrial rubber components. Batteries being a product manufactured mainly outside the State of Kerala, its sales mainly attract Central Sales Tax. Petitioner's unit was declared as a sick industrial unit and it was also granted sales tax exemption from 1990 to 1996 as per Exts.P1 and P2 orders. Subsequently, when the petitioner sought for exemption for the year 2001, the primary authority namely, the District Industries Centre, Kottayam, by letter dated 14.1.2002 informed him that the Government have extended the benefit of Central Sales Tax exemption to sick small scale industrial units by issuing Notification SRO No. 752/94 (G.O.(P) No. 69/94/TD dated 3.6.1994) and the sales tax exemption ordered as per proceedings No. C2-2198/90/Dis dated 9.5.1990 (Ext.P1) and the proceedings dated 27.12.1993 (Ext.P2) in favour of the unit under the Sick Unit's Scheme are seen ordered well before the issuance of the said notification and hence those notifications are

not applicable as regards Central Sales Tax exemption. The matter had been taken up with the District Industries Centre, Thiruvananthapuram in the light of SRO No. 75/94 for confirmation/instructions. Petitioner preferred an appeal before the second respondent, who by Ext.P7 order dated 21.10. 2005 rejected the claim for exemption towards Central Sales Tax. Petitioner impugns Ext.P7 in this writ petition.

2. As could be seen, Exts.P3 and P7 relates to the claim for exemption from central sales tax on the sales effected by the petitioner. Ext.P7 is the proceedings of the Director of Industries and Commerce, Thiruvananthapuram. The claim for exemption towards central sales tax was rejected on the reasoning that the unit was granted sales tax exemption as per SRO 227/87 applicable to sick units and not under expansion scheme notified in SRO 499/90 and SRO 502/99. Hence the request for exemption on central sales tax was rejected by the District Industries Centre. In the appeal there from before the Director of Industries and Commerce, it was the contention of the appellant that as per SRO 499/90 sales tax exemption is granted to sales tax, purchase tax and central sales tax for new industrial units and also for the existing industrial units which effects diversification, modernization and expansion. As these Notifications came into force from 1.4.1990 and the exemption is granted from 28.3.1990 to 27.3.1995, petitioner is entitled for additional exemption from 31.12.1992 to

26.3.1995, for central sales tax also. They also contended that in SRO 499/90 it is stated that the small scale industrial units which were registered with the Department of Industries and Commerce prior to 1.4.1990 which have not fully availed of the concession granted as per SRO 968/90 shall also be eligible for the concessions granted under the said notification.

3. On the other hand, the Department contended that as per S.R.O. 1730/93 (CST Notification) read with the amendment Notification SRO 752/94, Government granted exemption under the Central Sales Tax Act on the turnover of sale of goods produced and sold by Sick Small Scale Industrial Units placed under rehabilitation Scheme only with effect from 1.1.1994, that the unit has been granted sales tax exemption under SRO 227/87 and not under 968/80, that SRO Nos. 499/90 & 502/90 are not applicable to Sick SSI units for enjoying sales tax exemption under Sick Units Rehabilitation Scheme, that the two orders of exemption granting sales tax exemption to the unit were issued under SRO 227/87 which is applicable for sales tax exemption under the Kerala General Sales Tax only, that Central Sales tax exemption is not covered by SRO 227/87, that SRO 1730/93 (CST Notification) came into force with effect from 1.1.94 only and that the Government for the first time introduced the benefit of CST exemption to Sick units by issuing SRO No. 752/1994 amending SRO 1730/93 which is in force with effect from 1.1.1994 only.

4. The appellate authority, after considering the rival contentions, held that the unit was previously granted sales tax exemption under the Sick Unit Scheme under which Central Sales Tax exemption is not allowable for the period prior to 1.1.1994. The contention of the unit is that the finding that SRO Nos. 499/90 and 502/90 have to be applied in their case was without any merit. According to them, as per SRO Nos. 227/87 and 752/94 they are entitled for exemption. But there is nothing in SRO 227/87 granting exemption from Central Sales Tax to sick units. The exemption for central sales tax to sick units was introduced for the first time by SRO 752/94 which takes effects from 1.1.1994 only as the amendment to CST exemption notification 1730/93 came into force with effect from 1.1.1994.

5. The learned counsel Sri. Bechu Kurian Thomas, appearing on behalf of the petitioner contended that Ext.P7 order is wrong and unsustainable in law. According to him, by virtue of SRO 502/90, Ext.P8 produced in the case, sales tax exemption has been granted to all existing small scale industrial units which effects diversification/ extension/modernization for a period of three years from the date of completion of such expansion/modernization. According to him, the authority below failed to consider Clause (2) SRO 502/90.

6. I shall now consider this contention. As per SRO 502/90 (Ext.P8 new small scale industrial units in the State which were started commercial

production on or after 1.4.1990 are eligible for exemption from central sales tax for a period of five years. Likewise, existing small scale industrial units which effected diversification/expansion/modernization after 1.4.1990 will also be eligible for central sale tax exemption on the sale of goods manufactured by such units for a period of three years from the date of completion as certified by the General Manager of District Industries Centre, subject to the condition that the cumulative general sales tax, additional sales tax, surcharge, purchase tax and central sales tax concession of such units shall not exceed the amount equal to the value of the new plant and machinery used/owned by the unit for such diversification/expansion/modernization, as the case may be. Petitioner, which was a sick unit, on his own showing that it only availed certain financial assistance from the State Bank of Travancore so as to revive the unit under the Sick Units Rehabilitation Programme had been granted the benefit available to the sick industrial unit and afforded exemption from sales tax by Ext.P1. Even though petitioner would state in para 5 of the writ petition that he made additional investment with effect from 31.12.1992 for the purpose of revival of his unit and he was also granted exemption under SRO 502/90 for such additional investments for revival, he was not able to produce any materials nor has a contention as such that there was any expansion/modernization of his unit. Going by SRO 502/90

it is clear that the intention behind granting of central sales tax exemption was to new industrial units starting commercial production after 1.4.1990 and those existing industrial units which effected diversification/expansion or modernization. In the case of the petitioner, there was no expansion or modernization and as such there was no certification made by the District Industries Centre of any such expansion/modernization. Therefore, the notification granting Central sales tax exemption as per this order will not be available to the petitioner unit.

7. As regards a sick unit like the petitioner is concerned, the Notification SRO 227/87 dated 7.2.87 issued in exercise of the powers under Section 10 of the Kerala General Sales Tax Act alone applies and therefore, whatever exemption there under could only relate to the sales tax exemption under the State enactment and will not apply to tax under the Central Sales Tax Act. Admittedly, petitioner had been given benefits as per Exts.P1 and P2. Likewise SRO 752/94 was issued as per G.O.(P) No. 69/94 dated 3rd June, 1994. That was a notification issued under Section 8 of the Central Sales Tax Act. By the said notification, an amendment was made to SRO 1730/93 by adding the following:

> "(v) by sick Small Scale Industrial Units on the turnover of the sale of goods manufactured by such units within the State and sold in the course of Inter-State trade or commerce shall be nil for a period of five years in the case of closed down sick

> unit from the date of commencement of sale of such goods by the units after revival and in the case of running sick units from the date of disbursal at least 25 percent of rehabilitation assistance or from the date from which the unit is declared as a sick unit which ever is earlier."

8. SRO 1730/93 prior to the amendment as per SRO 752/94, as noticed above, did not cover the sick industrial units which were closed down and subsequently revived by extending any such Central sales tax exemption. But the amendment brought out by SRO 752/94 cannot be given retrospective effect beyond the date of commencement of the parent notification namely SRO No. 1730/93 which took effect only on 1.1.1994.

9. It was further contended by the learned counsel appearing for the petitioner that the benefit of SRO 227/87 and SRO 502/90 should be held as extending to Central sales tax exemption as well. I am unable to accept this contention. SRO 227/87 was one issued in exercise of the power under Section 10 of the Kerala General Sales Tax Act. Since this is a statutory notification, the exemption granted there under cannot be extended to the tax under a Central Statute.

10. The next contention advanced by the counsel is based on the decision of the apex court **in Grasim Industries Ltd. V. State of Madhya Pradesh** ((1999) 8 SCC 547) and the decision **in Dr. Suresh Chandra Verma v. The Chancellor, Nagpur Univesity ((1990) 4 SCC 55**). In

Grasim Industries' case the apex court held that the exemption notification has to be interpreted strictly and has to be read in its entirety and not in parts. The source of power being under the Kerala General Sales Tax Act in exercise of which the notification is issued, such notification granting exemption confines to the liability of tax under the said enactment only. Though SRO 502/90 was issued in exercise of the power under Section 8(5) of the Central Sales Tax Act, the said notification covers only the new industrial units starting commercial production on or after 1.4.1990 as already observed above and to existing small scale industrial units which undertakes diversification/expansion/modernization after 1.4.1990.

In the result, I find no merit in this writ petition. Accordingly, it is dismissed.

P.R. RAMAN,
JUDGE.

knc/-